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NO. 23693

IN THE SUPREME COURT OF THE STATE OF HAWAII

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LIFE OF THE LAND, LAURA LEE BOLLES, MERYL ANDERSEN, and  
LARRY K. MCELHENY, Appellants-Appellees/Cross-Appellants

vs.

ZONING BOARD OF APPEALS of the City and County of Honolulu,  
DEPARTMENT OF LAND UTILIZATION of the City and County of  
Honolulu, and JUST IN TIME FOODS, INC., dba MCDONALD'S OF  
HALEIWA, Appellees-Appellants/Cross-Appellees

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 97-4580)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Cross-Appellants Life of the Land, Laura Lee Bolles, Meryl Andersen, and Larry K. McElheny (Life of the Land collectively) appeal from: (1) the minute order dated July 26, 2000 denying its motion for taxation of costs against cross-appellee Just In Time Foods, Inc., dba McDonald's of Haleiwa (McDonald's) in the amount of \$387.18 as the prevailing party under Hawaii Rules of Civil Procedure (HRCP) Rule 54(d), and (2) the order dated July 28, 2000 denying Life of the Land's motion for reconsideration of the minute order dated July 26, 2000 and order denying motion for costs, by the Circuit Court of the First Circuit, the Honorable Eden E. Hifo presiding. On appeal, Life of the Land contends that the circuit court erred by not awarding costs to it as the prevailing party under HRCP Rule 54(d).

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) Life of the Land's appeal is considered solely from the circuit court's July 28, 2000 written order because a minute order is not a part of the record on appeal, see Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(a); (2) the circuit court erred (a) in denying cross-appellant Life of the Land's motion for taxation of costs in the amount of \$387.18 as the prevailing party under HRCP Rule 54(d), and (b) in denying cross-appellant Life of the Land's motion for reconsideration, see HRCP Rule 54(d); Abreu v. Raymond, 56 Haw. 613-14, 546 P.2d 1013-14 (1976). Further, we note that cross-appellee McDonald's did not object in the circuit court to imposition of the requested costs, and takes no position on this issue on appeal. Therefore,

IT IS HEREBY ORDERED that the circuit court's order dated July 28, 2000 denying the motion of cross-appellant Life of the Land for taxation of costs against cross-appellee McDonald's is reversed and remanded to the First Circuit Court for entry of an order granting cross-appellant Life of the Land's motion for

taxation of costs against cross-appellee McDonald's in the amount of \$387.18 as the prevailing party under HRCP Rule 54(d).

DATED: Honolulu, Hawai'i, December 3, 2003.

On the briefs:

William S. Hunt and  
Lea Hong (Alston Hunt Floyd  
& Ing) for Appellants-  
Appellees/Cross-Appellants  
Life of the Land, Laura Lee  
Bolles, Meryl Andersen, and  
Larry K. McElheny

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County of Honolulu, fka  
Department of Land Utilization

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Sheree Kon-Herrera (Fukunaga  
Matayoshi Hershey & Ching)  
for Appellee-Appellant/Cross-  
Appellee Just in Time  
Foods, Inc., dba McDonald's  
of Haleiwa